

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANTHONY L. BREEDLOVE,

Plaintiff,

DECISION AND ORDER

05-CV-6279L

v.

SUPERINTENDANT DANIELL J. MANDELL,  
et al.,

Defendants.

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Plaintiff, Anthony L. Breedlove (“Breedlove”), commenced this action alleging that he was subjected to excessive force and retaliation by corrections officers when he was housed in the Chemung County Jail. Breedlove originally commenced the action *pro se*, but this Court recently appointed counsel on March 15, 2011 (Dkt. #43).

Plaintiff’s counsel moved by letter (Dkt. #45) requesting leave to conduct depositions of some of the defendants. Defense counsel opposes the request.

It is true that the time within which to conduct discovery has long since passed. It is also true that appointment of counsel later in the case in preparation for trial does not warrant opening up all discovery and motion practice which has long since concluded.


Nevertheless, I note that Breedlove, while he was proceeding *pro se*, moved for leave to depose defendants in September 2007 (Dkt. #22). Ultimately, that effort was denied when the Magistrate Judge supervising this case declined Breedlove’s request for a stenographer (Dkt. #39).

Since Breedlove did seek to depose defendant in a timely manner, I am inclined to reopen discovery to allow the examination of some of the defendants. Plaintiff’s request noted that counsel did not wish to depose all of the defendants, and I agree that there must be some restriction.

It is, therefore,

ORDERED that plaintiff is granted leave to depose three of the defendant guards who were allegedly involved in the acts against Breedlove. I would think this should be sufficient to obtain discovery concerning the incidents at issue. Such depositions should be conducted within ninety (90) days of entry of this Decision and Order.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 12, 2011.